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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 **STATE OF CALIFORNIA, by and through**
14 **XAVIER BECERRA, ATTORNEY**
15 **GENERAL, and the CALIFORNIA AIR**
16 **RESOURCES BOARD; and STATE OF**
17 **NEW MEXICO, by and through HECTOR**
18 **BALDERAS, ATTORNEY GENERAL,**

19 Plaintiffs,

20 v.

21 **RYAN ZINKE, Secretary of the Interior;**
22 **JOSEPH R. BALASH, Assistant Secretary for**
23 **Land and Minerals Management, United States**
24 **Department of the Interior; UNITED STATES**
25 **BUREAU OF LAND MANAGEMENT; and**
26 **UNITED STATES DEPARTMENT OF**
27 **THE INTERIOR,**

28 Defendants.

Case No. 4:18-cv-05712-YGR

Consolidated with No. 4:18-cv-05984-YGR

JOINT CASE MANAGEMENT STATEMENT; [PROPOSED] ORDER

Case Management Conf.: Jan. 7, 2019

Time: 2:00 p.m.

Judge: Hon. Yvonne Gonzalez Rogers

Courtroom 1, 4th Floor,
1301 Clay Street, Oakland, CA 94612

The parties to the above-entitled actions submit this Joint Case Management Statement and [Proposed] Order pursuant to the Standing Order for All Judges of the Northern District of California dated November 1, 2018, Judge Gonzalez Rogers' Standing Order In Civil Cases dated February 24, 2017, and Civil Local Rule 16-9. Undersigned counsel for Plaintiffs, Defendants,

1 and Intervenor-Defendants have discussed the items enumerated in the Court’s Standing Orders
2 and respectfully submit the following joint statement.

3 1. Jurisdiction and Service

4 This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction),
5 and 5 U.S.C. § 702 (Administrative Procedure Act (“APA”)). All parties have been served.

6 2. Facts

7 On September 28, 2018, Defendant U.S. Bureau of Land Management (“BLM”) revised
8 in part and rescinded in part a regulation it had adopted in November 2016 to address the waste of
9 natural gas from new and existing oil and gas operations on federal and Indian lands, and to
10 clarify when gas lost through venting, flaring, or leaks is subject to royalties. 83 Fed. Reg. 48,194
11 (Sept. 28, 2018) (the “Revision/Repeal Rule”). On September 18, 2018, State Plaintiffs filed this
12 litigation challenging the Revision/Repeal Rule. Case No. 4:18-cv-05712. On September 28,
13 2018, Conservation and Tribal Citizen Group Plaintiffs filed a related case. Case No. 4:18-cv-
14 05984. The Court has consolidated these cases. Case No. 4:18-cv-05712, ECF No. 45; Case No.
15 4:18-cv-05984, ECF No. 51.

16 The Western Energy Alliance (“the Alliance”) and Independent Petroleum Association of
17 America (“IPAA”) and the State of Wyoming (“Wyoming”) have intervened as Defendants in
18 these cases. On December 12, 2018, the American Petroleum Institute (“API”) moved to
19 intervene. These parties may be collectively referred to as “Intervenor-Defendants.”

20 3. Legal Issues

21 Plaintiffs allege that, in promulgating the Revision/Repeal Rule, Defendants violated: (1)
22 the Mineral Leasing Act, 30 U.S.C. §§ 187, 225; (2) the Federal Land Policy Management Act
23 (“FLPMA”), 43 U.S.C. §§ 1701(a)(8), 1702(c), 1732(b); (3) the National Environmental Policy
24 Act (“NEPA”), 42 U.S.C. § 4332(C); and (4) the APA, 5 U.S.C. §§ 553, 706(2)(A), (C).

25 Defendants and Intervenor-Defendants dispute these claims.
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1 4. Motions

2 The Court granted the Conservation and Tribal Citizen Group Plaintiffs' stipulation to
3 consolidate and the Alliance and IPAA's and Wyoming's motions to intervene. API's motion to
4 intervene is pending.

5 Because this case is governed by the APA, the parties anticipate resolving this matter
6 through summary judgment motions after the preparation of an administrative record.
7 Accordingly, the parties proposed to depart from the Court's Standing Order in Civil Cases in the
8 following ways. *See* Judge Gonzalez Rogers' Standing Order in Civil Cases #9 (Motions for
9 Summary Judgment). First, pursuant to Section 6 of the Court's Standing Order, the parties are
10 fully prepared to attend the scheduled case management conference through counsel with
11 authority to enter into stipulations and make admissions, and to address all relevant issues in this
12 Court's standing order and local rules. However, the parties do not believe that a case
13 management conference or pre-filing conference for the summary judgment motions are
14 necessary in this case should the Court adopt the schedule proposed in paragraph 17 below. If the
15 Court wishes to hold a case management conference or pre-filing conference, the parties propose
16 that the Court combine them into a single conference. Second, because of the number and
17 complexity of the claims, the parties propose to exceed the page limits and timing for summary
18 judgment motions. Third, because the undisputed facts will be contained in the administrative
19 record, the parties propose to each provide a statement of facts with citations to the administrative
20 record as part of their motion or cross-motion for summary judgment rather than providing
21 separate supporting and responsive statements of facts. Finally, the parties seek to file more than
22 one motion and cross-motion for summary judgment per side because there are multiple parties
23 with distinct interests on each side. *See* Order Granting Stipulation to Consolidate Cases, ECF
24 No. 45 ("Consolidation does not require any party to file joint briefs, or impact the rights of any
25 party to file separate pleadings."). The parties' proposed schedule for production of the
26 administrative record and briefing summary judgment is set forth in paragraph 17 below.

1 5. Amendment of Pleadings

2 The parties do not currently anticipate any further amendment of the pleadings. The
3 parties propose that any such motions, if filed, would toll the summary judgment briefing
4 deadlines until the motions to amend are resolved.

5 6. Evidence Preservation

6 The parties have reviewed the Guidelines Relating to the Discovery of Electronically
7 Stored Information (“ESI Guidelines”), and have met and conferred pursuant to Fed. R. Civ. P.
8 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the
9 issues reasonably evident in these actions. *See* ESI Guidelines 2.01 and 2.02, and Checklist for
10 ESI Meet and Confer. In this matter, such preservation is limited to that necessary to prepare and
11 submit the administrative record.

12 7. Disclosures

13 The parties anticipate that these actions will be resolved based on the undisputed facts
14 contained in the administrative record for the Revision/Repeal Rule. Evidentiary disclosures are
15 not required in record review cases, and none are anticipated. Fed. R. Civ. P. 26(a)(1)(B)(i).

16 8. Discovery

17 The parties anticipate that these actions will be resolved based on the undisputed facts
18 contained in the administrative record for the Revision/Repeal Rule and that discovery will not be
19 necessary.

20 9. Class Actions

21 These cases are not a class action.

22 10. Related Cases

23 The court has consolidated Case Nos. 4:18-cv-05712-YGR and 4:18-cv-05984-YGR. The
24 parties are aware of no additional related cases pending before another judge of this Court, or
25 before another court or administrative body.

26 11. Relief

27 Plaintiffs seek: (a) a declaratory judgment that Defendants acted arbitrarily, capriciously,
28 contrary to law, and in excess of statutory authority, in promulgating the Revision/Repeal Rule;

(b) an order setting aside and vacating the Revision/Repeal Rule; (c) an award of Plaintiffs’ costs, expenses, and reasonable attorney fees; and (d) such other relief as the Court deems just and proper. Defendants and Intervenor-Defendants oppose the relief sought and request that the actions be dismissed with prejudice.

12. Settlement and ADR

The parties have complied with ADR L.R. 3-5 and have filed ADR certifications with the Court. The parties do not believe that settlement or ADR would be productive at this time.

13. Consent to Magistrate Judge for All Purposes

Defendants have declined to consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment.

14. Other References

The parties do not believe that these cases are suitable for reference to binding arbitration, special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

The parties do not believe that it is possible to narrow the issues at this time.

16. Expedited Trial Procedure

Because judicial review in these cases is based on an administrative record, they should be decided on summary judgment and no trial is expected to occur. The parties do not request an expedited summary judgment schedule.

17. Scheduling

The parties respectfully propose the schedule below for certifying the administrative record and briefing cross-motions for summary judgment:

Deadline	Action
February 15, 2019	Defendants lodge the administrative record for the Revision/Repeal Rule with the Court, and serve on the parties for review.
30 days from AR filing	Deadline for parties to confer on administrative record disputes.
60 days from AR filing	Any motions challenging the completeness of the administrative record or for leave to supplement the record. (The filing of such a motion shall toll the merits briefing

1		schedule).
2	90 days from AR filing or 60	Plaintiffs' Motions for Summary Judgment. Plaintiffs'
3	days after any and all	motions will not exceed 40 pages each for the State
4	administrative record-related	Plaintiffs and Conservation and Tribal Citizen Group
5	motions are fully resolved,	Plaintiffs.
6	whichever comes last	
7	60 days after Plaintiffs file	Federal Defendants' Combined Opposition to Motions for
8	their Motions for Summary	Summary Judgment and Cross-Motion for Summary
9	Judgment	Judgment. Federal Defendants shall file one brief, which
10		will not exceed 60 pages.
11	14 days after Federal	Intervenor-Defendants' Combined Oppositions to Motions
12	Defendants' Combined	for Summary Judgment and Cross-Motions for Summary
13	Cross-Motion for Summary	Judgment. The Alliance, IPAA, and API's briefs will not
14	Judgment and Opposition to	exceed 40 pages total, to divide as they mutually agree.
15	Plaintiffs' Motions for	Wyoming's brief will not exceed 25 pages.
16	Summary Judgment	
17	30 days after Intervenor-	Plaintiffs' Combined Replies in Support of Motions for
18	Defendants file their	Summary Judgment and Oppositions to Cross-Motions for
19	Combined Oppositions to	Summary Judgment. Plaintiffs' replies and oppositions will
20	Motions for	not exceed 45 pages each for the State Plaintiffs and
21	Summary Judgment and	Conservation and Tribal Citizen Group Plaintiffs.
22	Cross-Motions for Summary	
23	Judgment	
24	45 days after Plaintiffs file	Federal Defendants' Replies in Support of Cross-Motion for
25	their Combined Replies in	Summary Judgment. Federal Defendants shall file one
26	Support of Motions for	brief, which will not exceed 50 pages.
27	Summary Judgment and	
28	Oppositions to Cross-	
	Motions for Summary	
	Judgment	
	14 days after Federal	Intervenor-Defendants' Replies in Support of Cross-
	Defendants' Reply in	Motions for Summary Judgment. The Alliance's, IPAA,
	Support of Cross-Motion for	and API's briefs will not exceed 30 pages total, to divide as
	Summary Judgment	they mutually agree. Wyoming's brief will not exceed 15
		pages.
	Earliest available date no	Hearing on Motions for Summary Judgment
	sooner than 30 days after	
	summary judgment briefing	
	completed	

The parties reserve the right to request or oppose modifications to the page limitations and briefing deadlines above.

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18. Trial

A trial is not anticipated in these record review cases. The parties anticipate that the summary judgment hearing will require approximately two hours.

19. Disclosure of Non-party Interested Entities or Persons

Conservation and Tribal Citizen Group Plaintiffs and Intervenor-Defendants have certified that there are no non-party interested entities or persons to be reported pursuant to Local Rule 3-15. Local Rule 3-15 does not apply to any governmental entity or its agencies, including State Plaintiffs and Defendants.

20. Professional Conduct

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. Other

The parties are not aware of any other matters that may facilitate the just, speedy, and inexpensive resolution of this matter.

1 Dated: December 31, 2018 Respectfully submitted,

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[PROPOSED] CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT AND [PROPOSED] ORDER is approved as the Case Management Order for this case, and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated: _____

Hon. Yvonne Gonzalez Rogers
United States District Judge